

Inheritance Distribution System in Central Sulawesi from the Perspective of Islamic Law

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ABSTRACT

The legal system in Indonesia is plural in nature of the existence of customary law, Islamic law, and laws in Western traditions. The customary law system seems to be dominantly used by rural communities in solving private problems, such as the distribution of inheritance. Considering Indonesia has a Muslim majority population, this article discusses the inheritance distribution system in rural communities from the perspective of Islamic law. The research location is Tinombala Village in Parigi Mautong Regency. This study uses qualitative methods with three data collection techniques: observation, interviews, and documentation. Primary and secondary data were analyzed using data reduction, presentation, and verification methods. The results of this study indicate that the distribution of inheritance carried out by the villagers is determined based on customary law, even though the majority of the population is Muslim. Based on local customary law, the assets left by the deceased parents are distributed only to the children who died. The last child often gets the most share. Such practice is not following the principle of inheritance distribution in Islamic law.

ARTICLE INFORMATION

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1. Introduction

Indonesia is a country with a plural legal system. In addition to a system that refers to continental law in the West, this Southeast Asian country also has a system based on customary law and Islamic law. Unlike the Continental system, which is often used in criminal cases, customary law and Islamic law are used in civil cases and private contexts, such as the settlement of inheritance distribution for deceased families. Considering that Indonesia is an archipelagic country with more than 1300 ethnic groups, customary law is often used by the community even though this country is known as the country with the largest Muslim population in the world.¹

For the Muslim community, Islamic law is believed to be a comprehensive system that not only regulates the relationship between God and humans but also between humans. One of the legal issues that have been regulated in detail in Islamic holy texts, the Qur'an and hadith, is the distribution of inheritance. In Islamic jurisprudence, the discussion of those who are entitled to receive the inheritance and their distribution is known as *faraidh*. This word has the same basic structure as an obligation (*faridhah*). Therefore, Muslim scholars in fiqh argue that the distribution of inheritance according to Islamic rules is an absolute obligation.²

One of the verses of the Qur'an that regulates this matter is the seventh verse of Surah al-Nisa`.

"For men there is a share in what their parents and close relatives leave, and for women there is a share in what their parents and close relatives leave—whether it is little or much. These are' obligatory shares."

Although the division of inheritance in Islamic jurisprudence has the ideal goal of fulfilling a sense of justice in the community, in the context of Indonesia, the application of inheritance distribution following the principles of Islamic law often experiences problems. Many tribes and customs provide a variety of alternatives for the community in this case while, at the same time, diverting their attention to the application of the Islamic legal system.³ One example, in this case, is the community in Tinombala Village, Ongka Malino District, Parigi Mautong Regency. Although the majority of the population of this village adheres to Islam, not a few still use the customary law system in the distribution of inheritance.

The distribution of inheritance based on customary law is determined based on an agreement or will be conveyed by a person while he is still alive. However, the initial survey in this study shows that there are local people who think that the system of inheritance distribution in Islam does not reflect the principles of justice they understand.

¹ Mohammad Daud Ali, *Hukum Islam, Pengantar Hukum Dan Tata Hukum Islam Di Indonesia* (Jakarta: Rajawali Pres, 2011), 231.

² Arsyam, Malkan, Siti Musyahidah, "Islamic Law Perspective on Settlement of Inheritance Disputes," *INTERNATIONAL*

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³ A. Sukri Samardi, *Transendensi Keadaan Hukum Waris Islam Transformatif* (Jakarta: PT RajaGrafindo Persada, 1997), 45.

This article discusses the inheritance distribution system based on customary law applied by the community in Tinombo Village and reviews the practice from the perspective of inheritance distribution in Islamic law discourse. Thus, this article not only enriches knowledge on how to understand and implement inheritance distribution in Islam in Muslim communities in remote areas of Indonesia but also contributes to the discourse of Islamic family law.

2. Literature Review

The concept and mechanism of inheritance distribution in customary law differ from the concept that applies in Islamic law. The differences between the two are as follows:

A. *Distribution of inheritance in customary law*

According to Soepomo, inheritance in customary law in Indonesia includes regulations governing the process of passing on and transferring goods, property, and intangible goods (*immateriale goederen*) from a generation (*generatie*) to their descendants. This process can even begin while an older person is still alive. This opinion is in line with the formulation of the Dutch legal expert who once served in Indonesia, Ter Haar, in customary law, inheritance is the legal rule on how the transmission and transfer of tangible and intangible wealth are transferred from generation to generation over the centuries.⁴

The heirs in customary law are divided into two categories. First, the primary recipients come from the descendants of the property owner, parents, siblings, descendants, and grandparents. Second, substitute recipients usually come from people or community groups with no family relationship with the property owner. At the practical level, the inheritance process in each custom in Indonesia can be carried out when the heir is still alive or has died. If it is done while the heir is still alive, the method chosen is forwarding, transferring, or giving a will, message, or mandate to the families. When the heir dies, the property division is delegated to his eldest son. Usually, in this latter method, the distribution is carried out balanced or based on religious regulations.⁵

The implementation of inheritance distribution between one ethnic group and another that exists in Indonesia cannot be generalized. In Javanese society, for example, inheritance can be distributed. Meanwhile, in indigenous peoples who adhere to a unilateral system, such as in the Minangkabau and Ambon ethnic groups, the property cannot be distributed to the descendants of the heirs. This last implementation system, by Djaren Saragih, is divided into two groups. First, the system of collective inheritance, in which the inheritance is considered as a whole, cannot be distributed but is owned collectively by the heirs. Second is the majorat system, where inheritance is not distributed to all family members but is

⁴ Soepomo, *Bab-Bab Tentang Hukum Adat* (Jakarta: PT. Pradnya Paramitha, 1986), 79.

⁵ Hilman Hadikusuma, *Hukum Waris Adat* (Bandung: Alumni Bandung, 1980), 147.

given only to the eldest children, both boys and girls.⁶

In contrast to Saragih's classification, Wignjudipoero formulated three standard inheritance systems in Indonesia. First is the collective system that allows the distribution of inheritance to the heirs, as in the bilateral community in Java. Second is the collective system in which inheritance with a particular value, commonly referred to as inheritance, is inherited only by specific groups of heirs. The heirs in this system not only have the right to use and not to distribute the property. The last is the majority system, in which the inheritance is passed on to part or all of the heir's children. This system can be found in indigenous Balinese communities where most ownership rights are given to the eldest son. Meanwhile, in Tanah Samendo, South Sumatra, most inheritance rights are given to the eldest daughter.⁷

Based on the variations in the implementation of inheritance in each custom in Indonesia, Zainuddin Ali formulated five principles that became the basis for the distribution of inheritance in customary law in Indonesia. First, the principle of divinity and self-control is owned by the heirs. In this case, they are assumed to be aware of the possessions that are gifts from God. Second, is the principle of equality and togetherness of rights, where the heirs are considered to have the same position as other parties who are also

considered entitled to inherit the property left or distributed by the testator. Third, is the principle of harmony and kinship between fellow heirs. Fourth, deliberation to reach the consensus of the heirs. Moreover lastly, justice in the distribution by considering the status, position, and services of each recipient of the property.⁸

B. Distribution of inheritance in Islam

The word *mirats*, inheritance in Arabic, means transferring something of a general nature, such as wealth, knowledge, nobility, or glory, between individuals or groups to others. A more specific understanding is put forward by al-Shabuni. According to him, *mirats* is the transfer of property rights from a person who has died to his heirs who are still alive. The inheritance can be in the form of assets or the rights of heirs under Islamic law.⁹

In addition to *warits*, the term in the same sense that is also often used by Muslims is *fara'idh*. Derived from the word *fardhu*, and is the plural form of *faridhah*, this word means part of the obligation that Allah has determined. In Islamic jurisprudence, *fara'idh* summarizes the meaning of the portion that has been determined to be the right of the heirs. The legal arguments that form the basis for the application of inheritance distribution in Islam rely on some verses in the Qur'an, especially in the letter al-Nisa'.¹⁰ The eleventh verse of the letter states:

⁸ Zainuddin Ali, *Pelaksanaan Hukum Waris Di Indonesia* (Jakarta: Kencana, 2008), 47.

⁹ Suparman Usman dan Yusuf Somawinata, *Fiqh Mawaris (Hukum Kewarisan Islam)* (Jakarta: Gaya Media Pratama, 2008), 13.

¹⁰ Ali Parman, *Kewarisan Dalam Al-Qur'an; Suatu Kajian Hukum Dengan Pendekatan Tafsir Tematik* (Jakarta: PT RajaGrafindo Persada, 1995).

⁶ Soerojo Wignojodipoero, *Pengantar Dan Asas-Asas Hukum Adat* (Jakarta: Haji Masagung, 1988), 161.

⁷ Hilman Hadikusuma, *Hukum Waris Adat*.

"Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two or more females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth—after the fulfillment of bequests and debts. Be fair to your parents and children, as you do not fully know who is more beneficial to you. This is an obligation from Allah. Surely Allah is All-Knowing, All-Wise."

The following paragraph also stipulates the provisions for the distribution of inheritance in an unusual case.

"You will inherit half of what your wives leave if they are childless. But if they have children, then your share is one-fourth of the estate—after the fulfillment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfillment of bequests and debts. And if a man or a woman leaves neither parents nor children but only a brother or a sister from their mother's side, they will each inherit one-sixth, but if they are more than one, they all will share one-third of the estate—after the fulfillment of bequests and debts without harm to the heirs. This is a command from Allah. And Allah is All-Knowing, Most Forbearing."

In his saying, as narrated by Muslim, the Prophet Muhammad *pubh.* recommends to every Muslim to distribute the inheritance to those entitled according to the provisions of the Qur'an.¹¹ In addition to referring to the

¹¹ Abid Bisri Mostafa, *Terjemah Sahih Muslim, Jilid III* (Semarang: Asy-Sifa, 1993).

explanations in the Qur'an and hadith, the distribution of the property of a deceased Muslim is also taken from the results of the *ijtihad* of Islamic jurists, especially from among the companions of the Prophet, their followers, and the scholars. The legal conclusions they formulate in cases that have not been agreed upon, such as *radd* and *'awl* are a guide for judges in making decisions for the settlement of cases in the Muslim community.¹²

Islamic jurists from Sunni circles agree that before the inheritance of a deceased person is distributed, the rights related to his interests and agreements legalized under sharia while still alive must be fulfilled first. These rights include, among others, the cost of administering the corpse, debts, and settlement of the wills that have been submitted. The remaining assets of the heir after the fulfillment of the three obligations are distributed to the heirs, who are determined based on three criteria. First, to those who have a genealogical kinship with the heir. Second, to those who have a marital relationship. And, thirdly, to the person who has a *wala`* relationship to the person who died because, previously, freed the heir from the status of being a slave. These three criteria for heirs can be canceled automatically if the heirs are not Muslim.¹³

Other conditions that invalidate the rights of heirs are murderers, who kill someone to get an inheritance, and the status of enslaved people who have not been freed. In practice, the distribution of inheritance in Islam must meet three pillars, including deceased property owners or heirs

¹² Agustina Kumala Dewi, "Ahli Waris Penerima Radd Dalam Perspektif Fiqih Mawaris (Faraidh) Dan Kompilasi Hukum Islam (KHI)," *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 10, no. 2 (2016): 172–200.

¹³ Beni Ahmad Saebani, *Fiqh Mawaris* (Bandung: Pustaka Setia, 2009), 13.

(*muwarrits*), heirs left by the testator and fulfilling the criteria as recipients of the share, and the existence of the heir's property to be inherited.¹⁴

Islamic jurisprudence has set specific categories and percentages for heirs along with certain conditions that can be variables that change the percentage of heirs. For example, the deceased's children have a share that is differentiated by gender and social role. They are commonly referred to as the main recipient group (*ashab al-furudh*). If the heir has a son and a daughter, then the share for the son is twice as much as the share due to the daughter. Likewise, family groups that have indirect kinships (*dzawi al-arham*), such as uncles and aunts, can receive inheritance under certain conditions.¹⁵

The distribution of inheritance for Muslims in Indonesia has been regulated in Article 171 of the Compilation of Islamic Law. This article summarizes information on parties who have the authority as decision-makers and the status of the assets of a deceased person. First, the determination of the heirs and the share of each recipient is the authority of the Religious Courts. Second, the heir is a Muslim who has died and has an inheritance to be distributed to his heirs. Third, a will is a gift from the testator to another person or institution that takes effect after he dies. Fourth, grants are gifts in the form of objects or assets carried out by the testator voluntarily and without compensation to people still alive.¹⁶

¹⁴ Syamsul Anwar, *Hukum Perjanjian Syariah: Studi Tentang Akad Fiqih Muamalat* (Jakarta: PT RajaGrafindo, 2010), 178.

¹⁵ Suhrawarsi K Lubis dan Komis Simanjutak, *Hukum Waris Islam Lengkap Dan Praktis* (Jakarta: Sinar Grafika, 2009), 39.

¹⁶ Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam Di Indonesia* (Jakarta: Kementerian Agama RI, 2011), 228.

C. Differences in the principle of justice in the distribution of inheritance

Both customary law and Islamic law adhere to the principles of justice in distributing inheritance. This is indicated by the existence of social agreements between the heir families. However, in terms of scope, Islamic law covers more family groups as recipients of inheritance distribution. In addition, in practice, the inheritance system in Islamic law already has a basis for implementation and institutionalization through the Religious Courts in Indonesia so that the possibility of abuse or subjectivity can be minimized.¹⁷

In contrast to the inheritance distribution system in customary law, which differs from one custom to another, the inheritance system in Islam adheres to the principles of universal distribution. Furthermore, the inheritance system in Islam adheres to the principles of universal distribution. This latter system does not only apply equally to various ethnic groups in Indonesia but also to the Islamic world in general. Based on these considerations, the inheritance system in Islamic law is the ideal standard that should be held in the practice of inheritance distribution by Muslims in Indonesia.¹⁸

3. Methodology

This research is a qualitative study in Tinombala Village. Geographically and administratively, the village is located in the Parigi Mautong Regency. The majority of the population in this village are transmigrants of Javanese

¹⁷ Abdillah Mustari, *Waris Perbandingan Hukum Islam Dan Undang-Undang Perdata Barat* (Makassar: Alauddin University Press, 2014), 99-131.

¹⁸ Prodjojo Hamidjojo, *Hukum Waris Indonesia* (Jakarta: Stensil, 1992), 37.

ethnicity, are Muslim, but practice customary law as the basis for the distribution of inheritance. The data collected by the researcher is divided into two categories, namely primary and secondary data. Primary data comes from direct observations of inheritance-sharing practices and interviews with relevant informants at the research site.¹⁹

Secondary data are library data regarding customary law derived from the holy texts of Muslims, the Qur'an and hadith, scholars' opinions, and Indonesian government regulations summarized in the Compilation of Islamic Law. Thus, the data collection techniques in this study include observations or observations, interviews, and documentation. The data collected, in turn, was analyzed in three stages: data reduction, data presentation, and verification. Finally, the triangulation technique was applied to ensure the validity and credibility of the data used.²⁰

4. Result and Discussion

4.1 Method of inheritance distribution in Tinombala Village

The division of inheritance is a social issue held with a good purpose. For this reason, each community group belonging to an ethnic unit develops a format for inheritance distribution based on their customary principles. This division of inheritance based on customary law is passed down from

generation to generation. The same phenomenon is also seen in the community in Tinombala Village, where this research was carried out. The majority of the population in the village are transmigrants who come from and are of Javanese ethnicity. They came to this location in the 1970s by the policies of the New Order government. Although most people in Tinombala village are Muslim, they prefer to practice inheritance distribution based on customary law.

The division of inheritance among the Tinombala Village community adheres to a patrilineal system. This system focuses on the male lineage and the male genealogical pathway. Thus, the status of women does not get the rights of the property left by the heir. In practice, the distribution of inheritance is carried out through deliberation to reach an internal consensus within the heir's family. This process can be done when the testator is alive or dead. In other words, the family has a significant role in determining the share of each heir.

Local adat leaders explained that the process of determining the recipient of the inheritance and its share based on customary law had been practiced by generations before. The maintenance of tradition seems to significantly influence the reasons behind the practice of sharing heritage in the local community.

"The distribution of inheritance in Tinombala Village is still carried out from generation to generation and rarely uses Islamic law. Since the first, your father and mother have practiced this way. They divide the inheritance evenly among the children of the heirs, even though the last child gets

¹⁹ Syamsul Anwar, *Hukum Perjanjian Syariah: Studi Tentang Akad Fiqih Muamalat*.

²⁰ John W. Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches (Second Edition)* (London: Sage Publications Inc., 2007), 51.

the most share because he was given the trust to take care of the abandoned house by mutual agreement."

In the deliberation process, the wishes of the heirs are highly considered. The heirs can determine for themselves who and how much property the heirs receive. Usually, property for children comes first. The rest will be left to the wife and mother of the heir.

"This inheritance distribution is carried out before the heir dies. We divide it based on his wishes, and it is felt that our children are ready. We only distribute the inherited property to his children. If there is anything left, it is part of his wife or mother. "

The heir and his children only attend deliberations in the distribution of inheritance. In this context, the son-in-law is not involved. Third parties from religious leaders and village officials are presented if there is a dispute in the deliberation process. However, disputes over the distribution of inheritance are very rare.

"The distribution of inheritance in our village is usually carried out through deliberation between parents and children, without involving other people. The distribution of assets is carried out based on an agreement that has been reached. If there is a dispute, the family invites religious leaders or village officials as mediators or third parties. They are expected to be the party that provides a fair solution to the existing disputes."

The distribution of assets in Tinombala Village is mostly done when the heir or parents are still alive. Then, the entire inheritance is distributed equally among all children.

"The distribution of inheritance still uses family deliberations because of the high trust in the family. Property is distributed equally to the heirs and is only decided by the children and parents. Usually, the distribution of property is done when the heir is still alive."

For the local community, as stated by Moh. Ali Prayetno, the inheritance system in Islamic law, is not popular. Few of them think that Islamic law is not fair enough to resolve inheritance distribution.

"In our opinion, people's understanding of heirs and the procedure for distributing inheritance in Islam is not very good. Maybe only a few of us understand the system of inheritance distribution in Islam. Therefore, we think the Islamic system is not fair, and we can accept the customary law as a solution to the settlement of the distribution of inheritance to the recipients."

The case of the distribution of inheritance to the Sugiono family is an example in this discussion. Sugiono died in 2010. The assets he left behind consisted of 4 hectares of rice fields, 2 hectares of gardens, and a house and yard with an area of 40 square meters. His heirs consist of a wife, a son, and a daughter. The property division is carried out in two stages: when he is still alive and after he dies. In the first stage, each child gets 2 hectares of rice fields and 1 hectare of gardens. In other words, there is no distinction based on gender. Therefore, all children get an equal share. The remainder of this division, the house, and yard of 30 square meters, were handed over to his wife. However, in the

second stage, the entire wife's share was given to the daughter because she was the last child.

Although, in the end, the assets that belonged to each of Sugiono's children were different, they could accept the decisions that had been made through the deliberation process. Also, they consider this method effective in preventing conflicts due to jealousy among siblings.

4.2 An overview of Islamic law on the distribution of inheritance in Tinombala Village

The description of the distribution of inheritance, along with an example of a case in the community in Tinombala Village, shows several differences with the provisions of Islamic law. First, Islamic law requires that inheritance be distributed after a family head, or property owner dies. This process also cannot be carried out directly. Fulfillment of the obligations of the heir while still alive, such as paying off debts, must be paid off by the family before calculating the entire property and dividing it among each heir according to their genealogical relationship and capacity.²¹ Meanwhile, in the Muslim community in Tinombala Village, the distribution of inheritance can be carried out even when the heir is still alive.

Second, the distribution of inheritance through the Islamic legal system prioritizes the share of the property to sons. Their claim is double that of the girls. The purpose of the

Shari'a behind the provisions is the role and obligations of men as the person in charge of the needs of their families. Women do not have these roles and responsibilities. In Islam, a woman's property is personal and does not need to be distributed to anyone.²² Therefore, the calculation of two to one does not apply to the distribution of inheritance in the Tinombala Village community.

Finally, the rules in the Compilation of Islamic Law in Indonesia require the determination of heirs and their share to be carried out by judges in the Religious Courts are not held by Muslims in Tinombala Village. Instead of submitting to official and authoritative legal institutions in a constitutional system, the division of inheritance with customary law is determined based on an agreement within the family. Such an agreement does not have a sufficiently strong legal basis in legal jurisprudence in Indonesia.²³

5. Conclusions

Even though the majority are Muslim, the distribution of inheritance by the community in Tinombala Village still adheres to the customary law taught by the previous generation. This inheritance division refers to the patrilineal system, where the genealogical relationship from the male side appears to be dominant. However, at the practice level, male domination

²¹ Ahmad Hanafi, *Pengantar Dan Syarah Hukum Islam* (Jakarta: PT Bulan Bintang, 1991), 143.

²² Sajuti Thalib, *Hukum Kewarisan Islam Di Indonesia* (Jakarta: Sinar Grafika, 1981), 8.

²³ Prodjojo Hamidjojo, *Hukum Waris Indonesia*.

does not mean they get priority because the inheritance is still distributed equally by the heirs to their sons and daughters. The wife or mother gets the remainder from the previous division. Agreements regarding the distribution of inheritance are often made when the owner of the property is still alive. Third parties are involved when there is a conflict of interest between the heirs.

Considering the inheritance system in Islamic law, the practice of inheritance distribution in Tinombo Village is still far from the ideal form. The significant role and social responsibility of men is a consideration that Islamic law uses to give a larger share, twice as much, of the rights that women get. In the context of Islam, justice is not translated into equality. Islamic law does not allow the distribution of inheritance to be carried out while the heir is still alive and before his social obligations, such as paying off debts, are completed. The neglect of the role of the Religious Courts as a legal institution in determining the heirs and their allotments, as happened in customary law, can lead to conflicts and new cases after the distribution of inheritance.

Socialization of the inheritance distribution system in Islamic law to rural communities needs to be massively carried out by the government and preachers in Indonesia. Such socialization not only confirms one of the objectives of the Shari'a to guarantee property but ensures that its distribution impacts the welfare of the community.

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